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Supreme Court of the United States

OCTOBER TERM, 1969

No. 425

JOHN R. HUGHES,

versus

FRANK STANDIDGE.

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 196 .

No. . . . . .

JOHN R. HUGHES,

versus

FRANK STANDIDGE.

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT.

To the Chief Justice and The Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the Judgment of the Louisiana Supreme Court finally entered on May 9, 1969, whereby petitioner's application for certiorari or writ of review of the opinion and decree of an intermediate appellate court of the State of Louisiana was refused or denied.

The effect of the denial of review by the Louisiana Supreme Court is the approval of the decision of the intermediate Appellate Court of the State of Louisiana, e.g., Court of Appeal, Fourth Circuit, State of Louisiana.

The intermediate Appellate Court decision instances a partial reversal of the facts of a jury verdict in favor of petitioner and against a Lieutenant of the New Orleans

Police Department, for false arrest and malicious prosecution, contrary to petitioner's constitutional rights under the second clause of the Seventh Amendment and the "due process clause" of the Fourteenth Amendment to the United States Constitution.

OPINIONS BELOW.

The opinion of the Court of Appeal, Fourth Circuit, State of Louisiana, reported as *John R. Hughes vs. Frank Standidge and Fred Jourdan,* (February 3, 1969, rehearing denied March 3, 1969), 219 So. 2d 6, is reproduced in Appendix A.

The *per curiam* of Louisiana Supreme Court, refusing or denying certiorari or writ of review is reported as *John R. Hughes vs. Frank Standidge,* . . . . La. . . . ., 222 So. 2d 64, and reads in its entirety as follows:

> "In Re: John R. Hughes applying for certiorari, or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.
>
> "Writ refused. On the facts found by the Court of Appeal we find no error in the judgment complained of.
>
> S/FWS
> S/JBF
> S/JBH
> S/EHMcC
> S/JWS
> S/MEB
>
> "Hamlin, J., is of the view that the application should be granted."

JURISDICTION.

This case was tried to a jury against two New Orleans Policemen, Lt. Frank Standidge and Patrolman Fred Jourdan, for damages for false arrest and malicious prosecution. The jury discharged Patrolman Fred Jourdan but returned a general verdict of $5,000. against Lt. Frank Standidge. This verdict and the judgment thereon was appealed to the Court of Appeal, Fourth Circuit, State of Louisiana, and by opinion and decree of February 3, 1969, this intermediate Appellate State Court, reviewing the verdict of the jury, found the jury was correct in awarding damages to petitioner on the false arrest charge but was in error in awarding damages on the malicious prosecution charge and reduced the verdict from $5,000. to $1,500. Stated another way, the State Court of Appeal reviewed the transcript of evidence and substituted or supplanted its own view of the purport of the testimony and evidence in place of that of the jury. On May 9, 1969, petitioner's application for certiorari or writ of review was refused or denied by the Louisiana Supreme Court. Petitioner invokes the provisions of 28 USC 1257 (3) as grounds for the application.

QUESTIONS PRESENTED.

1. Is the last clause of the Seventh Amendment to the United States Constitution proscribing re-examination of fact found by a jury, applicable, binding and obligatory on a State Court, where the Legislature of that State has granted to all of its citizens, by statute, a right to a plenary trial by jury of all of the issues of fact in suits at common law?

2. Is the proscription against re-examination of jury findings by any court such a fundamental part of "due process" as to fall under the protection of the "due process" clause of the Fourteenth Amendment and therefore applicable, binding and obligatory on State Courts, where citizens of such a state have been granted by state law a right to plenary trial by jury of all of the issues of fact involved in suits at common law?

STATE LAWS INVOLVED.

State laws involved in this case include the following:

1. Louisiana Constitution, Article 7, Section 11, which provides for the writ jurisdiction of the Louisiana Supreme Court.

2. Louisiana Constitution, Article 7, Section 29, which provides for the appellate jurisdiction of the Louisiana Courts of Appeal.

3. Louisiana Constitution, Article 7, Section 41, relative to the selection of jurors for the trial of civil and criminal cases.

4. Louisiana Code of Civil Procedure Articles 1731-1814 which provide for the detailed procedures for trial by jury in civil cases.

These state laws are reproduced in Appendix B.

CONCISE STATEMENT OF THE CASE.

Petitioner, John R. Hughes, a reputable general contractor for more than 40 years in and about the Parish of Orleans, wholly without a police record or smirch of any kind upon his public character, sued the Commanding Officer of the Fifth District Police Station in the City of New Orleans, Lt. Frank Standidge, and one of his subordinates, Officer Fred Jourdan, for false arrest and malicious prosecution, committed upon petitioner without probable cause, and with malice, while plaintiff was engaged in the lawful pursuit of his occupation.

A trial by jury resulted in a verdict and judgment dismissing Officer Fred Jourdan, Lt. Standidge's subordinate, from the action and from this, no appeal was taken. The jury rendered a verdict against Lt. Standidge for $5,000.

Lt. Standidge appealed, suspensively, to the Court of Appeal, Fourth Circuit, State of Louisiana, and following a hearing, the Court of Appeal reduced the verdict to $1,500., after reviewing the facts and finding the Lieutenant guilty of false arrest, without probable cause and with malice, on the one hand, but concluding erroneously from its own findings of fact that the Lieutenant was not guilty of malicious prosecution. Both, petitioner and the Police Lieutenant applied for rehearings which were refused without reasons being assigned for the refusal. Both parties filed applications for writ of review to the Louisiana Supreme Court.

To simplify this "Concise Statement Of The Case", the pertinent factual conclusions of the State Court of Appeal are herewith set forth:

"Certain facts are not in dispute, to-wit: Plaintiff was a contractor engaged in the moving of a house from 2501 Spain Street to 906 Flood Street, in New Orleans, on the morning of April 24, 1965; that he had a valid permit from the City of New Orleans to move the dwelling between midnight and 6 o'clock a. m. on the aforementioned date; that, at approximately 1 o'clock a. m., the house had been moved to the 900 block of Flood Street, in front of the lot on which it was to be located, and remained on the street for approximately four hours until the crew obtained boards to lay across the gutter so the house could be moved across it; that, at approximately 4:30 o'clock a. m., Plaintiff was arrested by Appellant (Lt. Standidge) and taken by Officer Jourdan and his partner to the Police Station where he was booked with violation of Sec. 42-22 of the Code of the City of New Orleans—Disturbance by intoxication or otherwise.

"Several days later, Officer Jourdan filed an affidavit with the Clerk of the Criminal District Court accusing Plaintiff of violation of LSA-R.S. 14:97, concerning obstruction of a highway of commerce. The District Attorney for the Parish of Orleans, acting on the information contained in the affidavit, filed a bill of information charging Plaintiff with Highway obstruction. Eventually the charge of disturbing the peace was dismissed in Municipal Court, and the District Attorney nol-prossed the charge of highway obstruction.

"There is conflict in the testimony regarding the circumstances under which Plaintiff was arrested.

Appellant testified Plaintiff was arrested because he became loud and boisterous when questioned about when the house would be moved from the street. On the other hand, Plaintiff testified Appellant demanded the house be moved immediately and that, when he explained that this could not be done because the boards were not in place, Appellant grabbed him by the seat of his pants and dragged him to the patrol car. The Jury obviously accepted Plaintiff's version of the incident. We find no manifest error in that determination.

* * * * *

"There is no doubt Plaintiff was the victim of a false arrest, and was not engaged in unlawful conduct at the time of his arrest.

"There was obviously no substance to either of the charges brought against Plaintiff. . . .

* * * * *

"As stated before, Appellant cannot be held liable for malicious prosecution but only for the damages which were the result of his false arrest. The above include humiliation and embarrassment, worry and inconvenience and mental anguish."

FEDERAL QUESTION FIRST RAISED IN APPLICATION FOR REHEARING TO STATE COURT OF APPEAL.

On application for rehearing to the state court of appeal, petitioner complained that by substituting or supplanting the jury's appreciation of the evidence with its own, the state court of appeal was violating petitioner's

rights under the Seventh and Fourteenth Amendments of the United States Constitution. See Appendix C for full text of petitioner's rehearing application.

Petitioner then applied to the Louisiana Supreme Court for certiorari or writ of review and in that application presented to the Louisiana Supreme Court the following "Question of Law" and "Assignment of Error", *inter alia:*

> "May an Appellate Court engage in a re-examination of the findings of a jury and modify those findings, when the defendant has made no application for remittitur or new trial to the Trial Court, other than according to the dictates of due process of law as set forth in the Fifth, Seventh and Fourteenth Amendments of the United States Constitution?"
>
> "The Court of Appeal erred when it engaged in a re-examination of the jury findings and modified the jury verdict, when no application for remittitur or new trial was made in the Trial Court by the defendant Police Lieutenant, contrary to plaintiff's constitutional rights secured unto him by the Fifth, Seventh and Fourteenth Amendments to the United States Constitution."

To this the Louisiana Supreme Court summarily responded:

> "Writ refused. On the facts found by the Court of Appeal we find no error in the judgment complained of."

Thus, the Louisiana Supreme Court attached greater significance to the facts found by three appellate court

judges, who never saw nor heard the witnesses and evidence, than to the verdict of " . . . . twelve good men and true . . . .", who had the advantage of seeing, hearing and evaluating the demeanor and credibility of the witnesses.

REASON FOR ALLOWING THE WRIT.

The Supreme Court Has Never Ruled On The Application Of The Second Clause Of The Seventh Amendment To The States.

The Seventh Amendment contains two distinct clauses:

1. "In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved," and

2. "No fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

Mr. Justice Story declared the two clauses severable in *Parsons v. Bedford*, 28 U.S. 433, 447-448:

> "But the other clause of the amendment is still more important, and we read it as a substantial and independent clause. * * * This is a prohibition to the courts of the United States to re-examine any facts tried by a jury in any other manner (than by the) modes known to the common law. * * *"

Necessary to the decision of this application therefore is not whether the Seventh Amendment grants trial

by jury in state courts. The basic, essential question is whether or not the second clause ("more important" because it insures that jury trial will be a reality rather than a promise) is obligatory on the several states, either directly or indirectly through the Fourteenth Amendment. This is the case because the State of Louisiana has already granted trial by jury to its citizens by legislative enactment. This legislative grant, however, is more illusory than real. In practice the state grants the right but withholds the privilege of jury trial. The withholding of this legislative grant of trial by jury is accomplished by the act of re-examining the jury findings by the appellate courts of the state. In the context of this case and similar ones such action constitutes an unconstitutional assumption of power by the appellate courts of Louisiana, and consequently results in the denial of constitutional due process. To understand the enormity of that denial, an understanding of the nature of the jury trial granted to petitioners and other citizens of Louisiana by the Legislature is helpful.

Articles 1731-1814 of the Code of Civil Procedure of Louisiana grant trial by jury to all citizens of the State as to all claims for $1,000.00 or more, with the few exceptions noted in Article 1733. To all intents and purposes these provisions of Louisiana law are a codification of the common law concept of jury trial. That the legislature intended that the jury would be the sole judges of the facts is made abundantly clear by the provisions of Article 1792:

> "In its charge to the jury the judge shall instruct the jurors on the law applicable to the cause sub-

> mitted to them, but he shall not recapitulate or comment upon the evidence *so as to exercise any influence upon their decision as to the facts.*" (Emphasis supplied.)

Such scrupulous regard for the province of the jury in this respect is in the highest tradition of jury trial. It leaves the jury free to do that which the law charges it to do, namely, weigh the evidence and pass upon the credibility of witnesses. The jury's findings of fact is binding upon the trial court and a new trial can be granted as to such findings only if it be proved that the jury was bribed or has behaved improperly so that impartial justice has not been done. Article 1814. Moreover the trial court is without authority to alter the verdict of the jury as to the amount of the award. In this respect he is limited to entering a remittitur or an additur but then only with the consent of the party affected. The only alternative to not receiving consent to either a remittitur or additur is the granting of a new trial. Article 1813. Thus the thrust of this legislative enactment simply means that the Louisiana Legislature intended the findings of fact made by the jury to be conclusive, absent the misbehavior of the jury that results in a denial of impartial justice, Article 1814, or the making of an award which shocks the conscience or sense of fair play. Article 1813. This trial by jury instituted by the laws of Louisiana obviously is one consistent with the common law concept of jury trial and contemplated by the Seventh Amendment to the Constitution. *Capitol Traction Co. v. Hoff.*, 174 U.S. 1.

If such trial by jury is one contemplated by the Seventh Amendment, then can a state appellate court,

by re-examining the jury findings and reaching a contrary fact-finding conclusion based only on a reading of a printed record of the evidence, deny a citizen of the jury verdict without offending the due process clause of the Fourteenth Amendment and the second clause of the Seventh Amendment? Petitioners believe not. To permit such a result is to permit the state to make *anything* due process which its judiciary chooses to declare is due process. But this is not possible. *Davidson v. New Orleans*, 96 U.S. 97; *Chicago B & Q R. Co. v. City of Chicago*, (1897) 166 U.S. 242. All branches of state government are subject to the constraints of the Constitution. One branch of state government cannot take away that which the other gives any more or less than can the whole state, where the commodity is due process, without doing violence to the essential nature of free government. Mr. Justice Miller spoke forcefully of this fact of constitutional law when he said in *Loan Association v. Topeka*, 20 Wall. 655, 663:

> "The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power, which grow out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

When the Louisiana Legislature granted trial by jury, it granted to its citizens a fundamental right, a right endemic in the very concept of liberty, and one considered as an indispensable safeguard of liberty. Trial by jury

ranks very high in the catalogue of constitutional safeguards, *U.S., ex rel., Toth v. Quarles*, 350 U.S. 11, and the federal policy favoring jury trials is of historic and continuing strength. *Simler v. Conner*, 372 U.S. 221. Forasmuch as trial by jury is part of the judicial process, it is, therefore, an essential part of due process contemplated by the Fourteenth Amendment. While it has been variously described, trial by jury universally has been characterized as a bulwark of protection for the common man in an open society. The Continental Congress, in the Declaration of Rights adopted October 14, 1774, described it as "the great and inestimable privilege of being tried by their peers of the vicinage". However described or characterized for certain history holds that nothing is more fundamental, nothing is held more inviolate, and nothing is more concomitant to a free democracy than one's right to be judged by his peers. It stands out in this country as a notion of the common man's political right which pervades the entire fabric of the democratic cloth. In its daily implementation it represents the dynamic participation of the governed in their government, the essential expression of the will of the people in a system of free institution as to which they have given their consent, and the partial fulfillment of the ancestral pledge of a government of the people.

History teaches further that the findings of one's peers were not to be subverted by the officials of government. Right or wrong these findings, when made according to law, were to be final. They were not to be reexamined according to the rules of the common law. As the court observed in *Capitol Traction Co., supra*:

"A comparison of the language of the Seventh Amendment, as finally made part of the Constitution of the United States, with the Declaration of Rights of 1774, with the ordinance of 1787, with the essays of Mr. Hamilton in 1788, and with the Amendments introduced by Mr. Madison in Congress in 1789, strongly tends to the conclusion that the Seventh Amendment, in declaring that 'no fact tried by jury shall be otherwise re-examined, in any court of the United States, than according to the rules of common law', had in view the rules of the common law of England, and not the rules of that law as modified by local statute or usage in any of the states.

* * * * *

"* * * 'Beyond all question, the common law here alluded to is not the common law of any individual state, for it probably differs in all, but it is the common law of England, the grand reservoir of all our jurisprudence. Now according to the rules of the common law, the facts once tried by a jury are never re-examined, unless a new trial is granted in the discretion of the court before which the suit is pending, for good cause shown, or unless the judgment of such court is reversed by a superior tribunal on a writ of error, and a venire facias de novo is awarded. This is the invariable usage, settled by the decisions of ages.' "

Even as early as 1812 an insidious intrusion into the province of the jury as fact-trier was finding roots in the New England States. This fact is exemplified by the decision in *United States v. Wonson,* 1 Gall. 5 Fed. Cas. No. 16,750, mentioned in *Capitol Traction Co., supra.* This insidious intrusion consisted of efforts by state appellate

courts of re-examining findings made by juries. In rejecting this foreign notion Mr. Justice Story is quoted as having held:

> "We should search in vain in the common law, for an instance of an appellate court re-trying the cause by a jury, while the former verdict and judgment remained in full force. The practice, indeed, seems to be a peculiarity of New England, and, if I am not misinformed, does not exist in more than one (if any) other state in the Union."

And now, more than one hundred years later, the same foreign notion rejected in *Wonson* is presented in this application for adjudication by this court. This notion is just as pervasively harmful to due process in 1969 as it was in 1812. The immediate question is whether or not the second clause of the Seventh Amendment and the due process clause of the Fourteenth Amendment, viewed against the backdrop of an ever-evolving jurisprudence exhibiting an ever-expanding concern for individual liberty, will permit this foreign notion to subvert the due process rights of the citizens of Louisiana.

As early as 1870 in the case of *Justices v. Murray*, 9 Wall. 274, 278, 76 U.S. 278, it was held that the proscription of the Seventh Amendment as to re-examination of jury findings applied not only to cases tried in the court of the United States but also to cases of "federal cognizance", coming up from state courts.

In 1897 the proscription of the second clause of the Seventh Amendment operating against federal courts

was extended to apply to suits at common law tried before a jury in a state court. *Chicago B & Q R. Co., supra.* In that case in speaking of this clause of the Seventh Amendment the court held:

> "It is clear that the last clause of the seventh amendment is not restricted in its application to suits at common law tried before juries in the courts of the United States. *It applies equally to a case tried before a jury in a state court, and brought here by writ of error from the highest court of the state.* * * *" (Emphasis supplied.)

It is also well settled that in diversity jurisdiction cases appearing before the federal courts the Seventh Amendment applies in full force. *Simler v. Conner,* 372 U.S. 221. Said the court in *Simler*:

> "We agree with respondent that the right to a jury trial in the federal courts is to be determined as a matter of federal law in diversity as well as other actions. The federal policy favoring jury trials is of historic and continuing strength. Parsons v. Bedford Breedlove & Robeson, 3 Pet. 433, 446-449, 7 L.Ed. 732; Scott v. Neely, 140 U.S. 106, 11 S.Ct. 712, 35 L.Ed. 358; Byrd v. Blue Ridge Rural Electric Cooperative, Inc., 356 U.S. 525, 537-539, 78 S.Ct. 893, 900-901, 2 L.Ed.2d 953; Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988; Dairy Queen, Inc. v. Wood, 369 U.S. 469, 82 S.Ct. 894, 8 L.Ed.2d 44. Only through a holding that the jury-trial right is to be determined according to federal law can the uniformity in its exercise which is demanded by the Seventh Amendment be achieved. In diversity cases, of course, the substantive dimension of the claim asserted finds its

source in state law, Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 118; see Cities Service Oil Co. v. Dunlap, 308 U.S. 208, 60 S.Ct. 201, 84 L.Ed. 196; Palmer v. Hoffman, 318 U.S. 109, 63 S.Ct. 477, 87 L.Ed. 645, but the characterization of that state-created claim as legal or equitable for purposes of whether a right to jury trial is indicated must be made by recourse to federal law."

Thus, whether the case is one of "federal cognizance" tried before a jury but coming from a state court, or one involving a suit at common law tried before a jury in a state court, or one of diversity jurisdiction in federal court applying state laws tried before a jury, the last clause of the Seventh Amendment on re-examination applies against the courts of the United States. Thus far, however, the state appellate courts of Louisiana and elsewhere have been permitted to do that which the last clause of the Seventh Amendment prohibits and that which this court has denied to itself and all federal courts in deference to the proscription of the Seventh Amendment.

Why is this so? How is it possible, consistently with the theory of federalism, for a state court to have greater power than the United States Supreme Court vis-a-vis the United States Constitution? Trial by jury is too important and transcendent a right of American justice to permit such a hybridization. It is a right justly dear to the American people. *Parsons v. Bedford, supra.* Legal writers from the time of Blackstone have advocated jury trial in the strongest terms:

"The trial by jury is looked upon as the glory of the English law, * * * an advantage in regulating the civil property, * * * the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals. * * * Because Rome, Sparta and Carthage have lost their liberties, therefore those of England in time must perish. But it must be recollected, that those states, at the time when their liberties were lost, were strangers to the trial by jury." Blackstone's Commentaries, Gavit Edition (1941), 689-90.

Emphasizing the underlying reason for jury trial (which so adroitly applies to this case) he further observed:

"If (the impartial administration of justice) be entirely entrusted to the magistracy, a select body of men, usually chosen * * * by parties holding the highest office in the state, their decisions will frequently have an involuntary bias toward those of their own rank and dignity; for it is not to be expected, that the view should be always attentive to the interest and good of the many.

* * * * *

"This, therefore, preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens." Id, 690.

If trial by jury truly is a basic and fundamental feature of the American concept of justice, then no state court, under

the process of re-examining the findings of a jury, should be permitted to deny this fundamental right to any citizen. Yet this is the unfortunate circumstance of citizens of Louisiana and citizens in some of the other states. Under the present law there exists a double standard in connection with the administration of the fundamental rights embodied in the Seventh Amendment. A full realization of this fundamental right is a fact of life in a federal tribunal. A complete negation of that right is a fact of life in the courts of Louisiana. A Louisiana citizen, who can show diversity of citizenship, can walk across the street from a state court into a federal court and enjoy the full benefit of trial by jury as secured by the Seventh Amendment; whereas, another Louisiana citizen, unable to establish diversity of citizenship, is denied the great privilege of jury trial, though the same state laws and the same basic, essential state facts are involved.

It is against the dictates of logic and common sense that citizens of Louisiana are entitled to the fundamental rights secured by the Seventh Amendment if their "state case" is brought in federal court but are denied of that fundamental right if their case is instituted in a Louisiana state court. Moreover, such a double standard practice in the area of federally secured fundamental rights is no longer constitutionally tolerable. *Mapp v. Ohio*, 367 U.S. 643. In closing the doors shut tight against this practice the court in *Mapp* said:

> "There is no war between the constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a state's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of

> the same amendment. Thus the state, by admitting evidence unlawfully seized, serves to encourage disobedience to the federal constitution which it is bound to uphold. Moreover, as was said in *Elkins*, 'the very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts.'"

The same common sense reason applies in the instant case. By usurping the powers of the jury and supplanting its judgment of the facts for that of the jury the Louisiana appellate courts acted in disobedience of the second clause of the Seventh Amendment. In so doing it widened and deepened the chasm between the federal rule and the Louisiana rule as to the fundamental rights of citizens under the Seventh Amendment. Thus in so doing it increased the needless conflict between the state and federal courts and further impaired the essence of a healthy federalism.

The right to trial by jury in Louisiana has its origin in the state constitution. Louisiana Constitution, Article 7, Section 41, provides:

> "The Louisiana Legislature *shall* provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases * * *." (Emphasis supplied.)

The state Legislature, in formulating jury trial by statute, was simply carrying out a constitutional mandate of the people. The people of Louisiana have made it unmistakably clear that they, like the other millions of Americans, consider jury trial a fundamental part of due process.

> "The guarantees of jury trial in the federal and state constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. * * * Beyond this, the jury trial provisions in the federal and state constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges." *Duncan v. State of Louisiana*, 391 U.S. 145.

Such a right assuredly is protected by the Fourteenth Amendment. And the shield of protection of the Fourteenth Amendment is no less invincible in this case simply because petitioners' right to trial by jury is denied by judicial authorities. As this court was apt to say in *Davidson v. New Orleans*, 96 U.S. 97, 102:

> "But a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, *and yet it might be that its final action would be inconsistent with that amendment*. In determining what is due process of law regard must be had to substance, not to form. This court, referring to the Fourteenth Amendment, has said: 'Can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the states if of no avail, and has no application, where the invasion of private rights is effected under the forms of state legislation.' The same question could be propounded, and the same answer should be made, in reference to judicial proceedings inconsistent with the requirement of due process of law." (Emphasis supplied.) See also *Cooper, et al. v. Aaron, et al.*, 358 U.S. 1.

CONCLUSION.

The questions presented to the Court by this application are not merely academic, or transitory or esoteric; the questions presented to the Court are real, palpable, troublesome problems created by Louisiana Courts on a daily basis. On a daily basis Louisiana Courts are depriving litigants of their right to jury trial as granted them by the state. The legal questions presented to the Court in this application have been presented to all four intermediate appellate courts of the State of Louisiana and to the Louisiana Supreme Court, timely and in good posture on numerous occasions. The Louisiana Supreme Court and the Louisiana Appellate Courts have in each instance ignored these legal issues just as if they had in fact never been raised. Unless the Supreme Court of the United States resolves the questions presented in this application, Louisiana litigants will continue to have their right to a jury determination of fact questions, granted to them by the Legislature, arbitrarily taken away from them by Louisiana Courts on a daily basis.

WHEREFORE, petitioner prays that a writ of certiorari issue in due course as provided for by law and by the rules of the Supreme Court of the United States.

FLOYD J. REED,
919 Maison Blanche Building,
New Orleans, Louisiana 70112,
Attorney for Petitioner.

CERTIFICATE.

STATE OF LOUISIANA
PARISH OF ORLEANS

I, Floyd J. Reed, Attorney for petitioner, John R. Hughes, duly admitted to practice before the bar of the Supreme Court of the United States, swear that a copy of the foregoing petition for writ of certiorari has been served on the parties hereto by U. S. Mail, postage prepaid on the . . . day of . . . . . ., 1969, as follows:

Beuker F. Amann, Esq., and
Jackson P. McNeely, Esq.,
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and Fred Jourdan,
City Hall—Civic Center,
New Orleans, Louisiana 70112.

Hon. Harold A. Moise, Jr., Deputy Clerk,
Louisiana Supreme Court,
Civic Center,
New Orleans, Louisiana 70112.

. . . . . .

FLOYD J. REED

Sworn to and subscribed on this . . . day of . . . . . ., 1969.

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Notary Public.